

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<div style="text-align: center;">RADAMED VELEZ Plaintiff, vs. ENHANCED RECOVERY COMPANY, LLC, Defendant</div>	<div style="text-align: center;">CIVIL ACTION NO. 16-cv-00164(SD)</div>
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AMENDED COMPLAINT

I. INTRODUCTION

1. This action is brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”). The FDCPA prohibits debt collectors from engaging in deceptive and unfair practices in the collection of consumer debt.

2. Defendant debt collector has sent out a collection notice to Plaintiff that states that a settlement may be reported to the IRS. Under prevailing IRS regulation, reporting would never be required in the compromise of less than \$600.00 of debt. Defendant’s statement is both false and misleading, in violation of the Act.

II. JURISDICTION

3. Jurisdiction arises under the FDCPA, 15 U.S.C. §1692k, and 28 U.S.C. §§1331 and 1337.

4. *In personam* jurisdiction exists and venue is proper as Defendant does business in this district and has caused harm in this district.

III. PARTIES

5. Plaintiff Radamed Velez (“Plaintiff” or “Velez”) is a consumer who resides in Levittown, Pennsylvania at the address captioned above.

6. Defendant Enhanced Recovery Company, LLC (“ERC” or “Defendant”) is a Florida limited liability company with a principal office as captioned.

7. ERC regularly uses the mail and telephone to attempt to collect consumer debts alleged to be due another.

8. ERC regularly collects consumer debts in the Eastern District of Pennsylvania.

9. ERC is a “debt collector” as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

IV. STATEMENT OF CLAIM

10. On August 3, 2015, Defendant ERC sent Plaintiff a communication in connection with a consumer debt claimed due to TD Bank USA, N.A./Target. (*See* correspondence from ERC attached hereto as Exhibit “A”, redacted per Fed. R. Civ. Pro. 5.2).

11. The letter includes a stated “Amount of Debt” of \$692.70. (*Id.*).

12. The letter then goes on to list a “Settlement Amount” of \$554.16. (*Id.*).

13. In the August 3, 2015 letter, Defendant states:

“In addition, any indebtedness of \$600.00 or more, which is discharged as a result of a settlement, may be reported to the IRS as taxable income pursuant to the Internal Revenue Code 6050 (P) ...”

(*See* Exhibit “A”).

14. The statement in the collection letter that “any indebtedness of \$600.00 or more, which is discharged as a result of a settlement, may be reported to the IRS as taxable income...” is false, deceptive, and misleading.

15. IRS Regulation 1.6050P requires that an “applicable entity” report a cancellation or discharge of indebtedness under certain circumstances but only when the forgiveness is in excess of \$600.00. It does not state the requirement to report a discharge of a *settlement*.

16. This obligation of \$692.70 would not have been settled for \$92.70, thereby leaving \$600 or more discharged.

17. In the context of this letter, Defendant's statement that a discharge "may be reported" can be read in two or more ways, one of which is inaccurate. The natural reading is that the event may – or may not – come to pass. As a practical matter, IRS reporting would never come to pass in the settlement of this \$692.70 debt.

18. ERC had reason to know that there would be no debt cancellation exceeding \$600.00 in the case of the settlement of this alleged \$692.70 debt. Thus, the statement that discharged indebtedness "may be reported" is misleading and deceptive in the context of this letter.

19. The statement is also false, deceptive or misleading as "income" is not always "taxable," nor is cancellation of indebtedness income "reported to the IRS" as "taxable" on a Form 1099-C pursuant to IRC 6050-P and related federal law.

20. An applicable entity only reports the "amount of debt discharged" (if \$600 or more) – whether that amount is "income," or "taxable income" are separate determinations (not made by ERC or its client).

21. As such, in no circumstance "may" ERC or its client "report[]" to the IRS that a discharge as a result of a settlement is "*taxable income*."

22. There was no reason to include this tax statement in this letter seeking to collect \$692.70.

23. The statement is materially misleading because *inter alia*:

(a) It needlessly injects the IRS into the collection process;

(b) It injects confusion as discharge of alleged indebtedness is not always "taxable," no determination as to whether the discharge constitutes "income"

or “taxable income” was ever made, nor is discharged indebtedness reported to the IRS as “taxable”;

(c) The least sophisticated consumer may reasonably believe that in order not to be reported to the IRS, he or she must pay enough on the alleged debt so that a balance of less than \$600.00 remains regardless of whether the event is reportable, or any exception applies; and

(d) The statement can negatively influence someone contemplating bankruptcy. The underlying debt here would almost always be dischargeable. However, any tax obligation that is created by the cancellation of the underlying debt would be non-dischargeable for at least 3 years. *See* 11 U.S.C. § 523(a)(1)(A) and 11 U.S.C. § 507(a)(8)(A)(i).

COUNT I – FAIR DEBT COLLECTION PRACTICES ACT

24. Plaintiff repeats the allegations set forth above as if the same were set forth at length herein.

25. Defendant violated the FDCPA by sending a collection notice to Plaintiff which:

- (a) Made false, deceptive, or misleading representations or statements in connection with the collection of consumer debt, 15 U.S.C. § 1692e;
- (b) Threatened to take any action that is not intended to be taken, 15 U.S.C. § 1692e(5); and
- (c) Utilized false representation or deceptive means to collect or attempt to collect a consumer debt, 15 U.S.C. § 1692e(10).

WHEREFORE, Plaintiff Radamed Velez prays that this Court enter judgment against Defendant Enhanced Recovery Company, LLC;

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

V. **DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury as to all issues so triable.

DATE: 3/3/16

Respectfully submitted:



CARY L. FLITTER
ANDREW M. MILZ

FLITTER MILZ, P.C.
450 N. Narberth Avenue, Suite 101
Narberth, PA 19072
(610) 822-0782

Attorneys for Plaintiff

EXHIBIT “A”



Enhanced Recovery Company, LLC

August 03, 2015

Creditor: TD BANK USA, N.A./TARGET CREDIT CARD
 Account Number: XXXXXXXXXXX3590
 Amount of Debt: \$
 Reference Number: 3099
 Settlement Amount: \$554.16

SETTLEMENT OPPORTUNITY

RADAMED VELEZ

Our records indicate that your balance with TD BANK USA, N.A./TARGET CREDIT CARD remains unpaid; therefore your account has been placed with Enhanced Recovery Company, LLC for collection efforts. We are willing to reduce your outstanding balance by offering a discounted payoff amount of \$554.16.

Upon receipt and clearance of \$554.16, your account will be closed and collection efforts will cease.

In addition, any indebtedness of \$600.00 or more, which is discharged as a result of a settlement, may be reported to the IRS as taxable income pursuant to the Internal Revenue Code 6050 (P) and related federal law.

Unless you dispute the validity of the debt, or any portion thereof, within thirty (30) days after your receipt of this notice, the debt will be assumed to be valid by us.



View statements, pay your balance, and manage your account online at www.payerc.com.



Telephone: (800) 270-8749 Toll Free. All calls are recorded and may be monitored for training purposes.



Send correspondence to: Enhanced Recovery Company, LLC., P.O. Box 57610, Jacksonville, FL 32241



Office Hours (Eastern Time): Mon-Thurs: 8:00 am-11:00 pm, Fri: 8:00 am-10:00 pm, Sat: 8:00 am-8:00 pm



This is an attempt to collect a debt. Any information obtained will be used for that purpose.

NOTICE - SEE REVERSE SIDE FOR IMPORTANT NOTICES AND CONSUMER RIGHTS

Please do not send correspondence to this address.

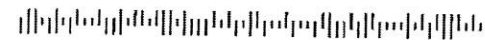
P.O. BOX 1259, Dept 98696
 Oaks, PA 19456



August 03, 2015

Reference Number
 3099

Amount of Debt
 \$



RADAMED VELEZ
 51 RED MAPLE LN
 LEVITTOWN PA 19055-1406

98691 - 736

Enhanced Recovery Company, LLC
 P.O. Box 23870
 Jacksonville, FL 32241-3870



PAP-1005-G-0



98691-10005-SIF_01_015-TNB1P-738

044560



Federal Validation Notice:

Pursuant to 15 U.S.C./1692g(a), take notice that:

1. The amount of the claimed debt is the amount stated in the letter on the reverse side of this notice.
2. The name of the creditor to whom the debt is owed is in the letter on the reverse side of this notice.
3. Unless you dispute the validity of the debt, or any portion thereof, within thirty (30) days after your receipt of this notice, the debt will be assumed to be valid by us.
4. If you notify our office below in writing within (30) days of your receipt of this notice that the debt, or any portion thereof is disputed, we will obtain verification of the debt or a copy of any judgment that may be of record against you. We will mail the verification or copy of the judgment to you.
5. Upon your written request to this office within thirty (30) days of your receipt of this notice, we will provide you with the name and address of the original creditor, if different from the current creditor listed in the letter on the reverse side of this notice.

Federal Notice:

This is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

Tennessee Residents:

This Collection Agency is licensed by the Collection Service Board of the Department of Commerce and Insurance.

Minnesota Residents:

This Collection Agency is licensed by the Minnesota Department of Commerce.

New York State Residents:

New York City Department of Consumer Affairs License Number: 1394588.

North Carolina Residents:

North Carolina Department of Insurance Permit Number: 103967.

Utah Residents:

As required by Utah Law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Our Corporate Address is:

Enhanced Recovery Company, LLC.
8014 Bayberry Road
Jacksonville, FL 32256

Colorado Residents:

For information about the Colorado Fair Debt Collection Practices Act, see www.coloradoattorneygeneral.gov/ca or any successor web address.

A consumer has the right to request in writing that a Debt Collector or Collection Agency cease further communication with the consumer. A written request to cease communication will not prohibit the Debt Collector or Collection Agency from taking any other action authorized by law to collect the debt. Local Address: 13111 E. Briarwood Ave. #340, Centennial, CO 80012, (303) 309-3839.

California Residents:

1. The State Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 AM or after 9 PM. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at: 1-877-FTC-HELP or www.ftc.gov.

2. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Massachusetts Residents:

You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten (10) days unless you provide written confirmation of the request postmarked or delivered within seven (7) days of such request. You may terminate this request by writing to the debt collector. If you wish to discuss this matter, please call us direct, between the hours of 8 AM and 5 PM EST, at the telephone number listed on the front of this notice. Local Address: 49 Winter Street, Weymouth, MA 02118.

We at Enhanced Recovery Company, LLC specialize in assisting persons in different financial situations. If additional assistance is needed, please contact us or visit our website.